

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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In the Matter of)
)
Implementation of the Cable Television)
Consumer Protection and Competition Act)
of 1992)
)
Development of Competition and Diversity)
in Video Programming Distribution and)
Carriage)

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

MM Docket No. 92-265

**COMMENTS OF LIBERTY CABLE COMPANY, INC.
ON PETITION FOR PARTIAL RECONSIDERATION**

Liberty Cable Company, Inc. ("Liberty"), by its attorneys, pursuant to Section 1.429 of the Commission's rules, hereby submits its Comments in support of the petition for partial reconsideration ("Petition") filed by the Wireless Cable Association International, Inc. ("WCAI") in the above-captioned proceeding.

1. In its Petition, WCAI urges the Commission to amend Section 76.1302(a) of its rules to specifically afford standing to file a complaint to any multichannel video programming distributor ("MVPD") aggrieved by a violation of Section 616 of the Communication Act of 1934 ("1934 Act"). Liberty, a satellite master antenna television operator that is successfully overbuilding and competing head-to-head in New York City with a local franchised cable company, supports this proposition.

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2. Section 616 of the Communications Act of 1934 (the "Act") directs the FCC to establish regulations which, among other things, prohibit cable operators from coercing video programming vendors into entering exclusive contracts as a condition of carriage on their systems (or retaliating against a vendor that fails to do so). Obviously, one of Congress' goals in enacting Section 616 was to protect programming vendors from such practices.

3. However, Section 616 was also designed as a means of providing all MVPDs with greater access to programming. As WCAI asserts in its Petition, by enacting Section 616, Congress recognized that through cable operator control over programmers, a cable operator could use its market power to quash its competitors.^{1/} Thus, by enacting Section 616, Congress manifested its concern about the impact of cable operators' coercive and retaliatory practices on both program vendors and competing MVPDs.

4. Last year, the Commission adopted regulations to implement Section 616 which, arguably, limit the effectiveness of this section. Specifically, Section 76.1302(a) of the rules provides that:

Any video programmer aggrieved by conduct that it alleges to constitute a violation of the regulations set forth in this subpart may

^{1/} See S. Rep. No. 102-92, 102d Cong., 1st Sess., at 23 reprinted in 1992 U.S. Code Cong. & Admin. News 1133, 1156.

commence an adjudicatory proceeding at the Commission.^{2/}

As discussed more fully in WCAI's Petition, the Commission's failure to specifically afford MVPDs that are victimized by a violation of Section 616 with standing to file a complaint with the Commission severely limits the effectiveness of Section 616 and is not in accord with Congressional intent. How realistic is it to assume that a video programming vendor will risk alienating a cable operator with significant market power by complaining to the Commission of a Section 616 violation? On the other hand, a competing MVPD that was a victim of such anticompetitive behavior would not be encumbered with the same inhibitions.^{3/}

5. By seeking to amend Section 76.1302(a) and thereby clarifying that both MVPDs and programming vendors have standing to file a Section 616 complaint, WCAI's petition offers a sensible approach to accomplish the Congressional objectives of enacting Section 616.

^{2/} 47 C.F.R. § 76.1302(a).

^{3/} It should be noted that those provisions of the Act and the Commission's rules which enable a MVPD to file a complaint against a programming vendor to obtain programming (See 47 U.S.C. 548 and 47 CFR §76.1000 et seq.) (the "program access provisions") have a different focus than the provisions about which the WCAI Petition is concerned. The program access provisions generally govern the relationship between the programming vendor and the cable operator when the cable operator and programming vendor are affiliated. The rule and statute which the WCAI Petition is focused on do not presuppose any relationship between the vendor and the cable operator.


CONCLUSION

WHEREFORE, for the reasons stated above, Liberty requests that the Commission grant WCAI's petition for partial reconsideration.

Respectfully submitted,

LIBERTY CABLE COMPANY, INC.

By:

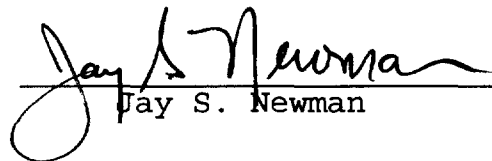

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Dated: May 24, 1994

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing "Comments of Liberty Cable Company, Inc." was served on the person listed below this 24th day of May, 1994, by first class United States mail, postage prepaid.


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